IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.751 of 2005
With
Civil Application No.350 of 2007

Badsha Rahimansha Fakir — Appellant
Vs.
Chamanbi Mahamad Mujawar & ors. — Respondents

Mr.M.V.Limaye for appellant.
Mr.S.K. Chinchalkar for resp.nos.1 to 5.

CORAM: B.H.MARLAPALLE, J.

April 11, 2007.

P.C.

1. Heard Mr.Limaye, the learned counsel for the appellant - original defendant no.1. Mr.Chinchalkar appears for respondent nos.1 o 5.

2. Regular Civil Suit No.326 of 1993 was filed by the present respondent no.1 - Chamanbi and her sons and daughters claiming partition in the joint family property and possession of 2/3rd share in the said property. The said Suit came to be decreed by the learned Civil Judge Junior Division at Miraj on 6/9/1995 by directing the defendant Nos.1 to 3 to deliver 60 paise share to the plaintiffs in the suit properties mentioned in the plaint para 1 within three months from the date of the order. This decree came to be challenged in Regular Civil Appeal No.487

of 1995 by the defendant nos.1 to 3 and the learned 1st Ad-hoc Addl. District Judge at Sangli was pleased to dismiss the same vide his judgment and order dated 2/8/2004. Hence this Second Appeal by the defendant no.1 only.

3. The admitted genealogy which appears in the judgment of the trial court states that the original ancestor was one Rahimansha and he begot two sons and one daughter i.e. Hasansha (died on 22/11/1939), Khadirsha (died on 10/9/1952) and Bumabi (died 30 years prior to filing of the suit). The first brother Hasansha had one son by name Alamsha (who was not alive when the suit was filed) and daughter Chamanbi (the plaintiff no.1). The second son Khadirsha had only one son Rahiman who was married to Gulshanbi and the couple had two sons and one daughter i.e. Badsha, Ambarsha and Jubeda (defendant nos.1 to 3). Bumabi had only one son by name Mohamad Bapu Mujawar who died on 21/12/1992. This Mohamad Bapu Mujawar was married to Chamanbi (plaintiff no.1) and from the said wedlock Chamanbi begot five sons i.e. Husen (plaintiff no.2), Gani (dead), Sikandar (plaintiff no.3), Yunus (plaintiff no.4) and Shabbir (plaintiff no.5). The LRs of Gani i.e. Mumtaz,

Ajij, Bashir and Ismile were brought on record as plaintiff nos.6 to 9. It was the case of the plaintiffs that the entire suit property and more particularly described in para 1 of the plaint originally belonged to Rahimansha, the father of Hasansha, Khadirsha and Bumabi. The plaintiffs claimed that plaintiff no.1 Chamanbi was the sole survivor of the first son Hasansha and she was married to the only son of Bumabi and as per the Islamic tenets of succession the daughter has Mohmad's share and her late father's share. The plaintiff no.1 - Chamanbi, therefore, claimed that she was entitled for 2/3rd share on the basis that Khadirsha's LRs will have 1/3rd share and she would get remaining 2/3rd share of Hasansha and Bumabi.

4. The relationship between the parties has not been disputed. However, the defendant nos.1 to 3, grandsons of Khadirsha claimed that most of the suit property was acquired by Khadirsha or his son Rahiman and there was also partition between Hasansha, Khadirsha and Bumabi. On this ground the suit for partition was opposed. It was also claimed that the land in Survey No.219 was the self acquired property of Rahimansha son of Khadirsha as per the sale deed

dated 17/8/1970. They also claimed that the said self acquired property was already sold by them to third party and even land in Survey Nos. 484/11A and 484/11 was also self acquired property of Rehman. In support of the plaintiff's case Sikandar (plaintiff no.3) was examined at Exhibit 30 and in support of the defendant's case defendant no.1 - Badsha was examined at Exhibit 42. The purported sale deed dated 17/8/1970 was placed on record along with he list of documents at Exhibit 34 but it was not proved. Similarly defendant no.1 had claimed that there was a sale transaction between Raheman and Dhanpal Khot in respect of land in Gat No.219 but the same could not be proved. Whereas Badsha in his cross-examination before the trial Court unequivocally admitted that the entire suit property was originally held by his great grandfather Rahimansha, father of Hasansha, Khadirsha and Bumabi and that the land in Gat No.219 was originally sold to Tatya Patil in 1965 and subsequently redeemed in the year 1970 in favour of his father Rahiman, son of Khadirsha. It was under these circumstances both the Courts below concurrently held that the entire suit property was the ancestral property and the plaintiffs were entitled for partition in the same.

5. The next question was regarding the shares of the plaintiffs and the defendants. Though plaintiff no.1 claimed that she was entitled to 2/3rd share in the suit property, both the Courts below relied upon the principles of succession under the Muslim Law and noted that the daughter does not get equal share with the sons and she would get a residual half share of the sons. Therefore, the original person Rahimansha's suit property would be distributed / partitioned with 40 paise share to Hasansha, 40 paise share to Khadirsha and 20 paise share to Bumabi. Hasansha though had a son by name Alamsha, he died issueless and, therefore Chamanbi, plaintiff no.1 was the sole heir of Hasansha. She would, therefore, succeed to the 40 paise share of Hasansha, her father in its entirety. She was married to Mohamad Bapu Mujawar, the only son of Bumabi and, therefore, Chamanbi (plaintiff no.1), her children and grandchildren together would get a share of 40 paise + 20 paise thus making a total of 60 paise in the ancestral property held by Rahimansha, the original ancestor. These concurrent findings recorded by both the Courts below are based on the evidence that was adduced before the trial Court and this oral as well

as documentary evidence has been reappreciated by the lower Appellate Court. The determination of the share was a fact finding exercise based on the principles of Mohammedan Law and the concurrent findings recorded by both the Courts below do not raise any substantial question of law for the consideration of this Court. Hence this appeal must fail at the threshold. The same is hereby dismissed in limine.

6. Civil Application No.350 of 2007 does not survive and the same stands rejected.

(B.H.MARL